

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 30th OF APRIL, 2024

WRIT PETITION No. 314 of 2024

BETWEEN:-

**SHRI DEEPAK KUMAR SHARMA S/O SHRI
SATYANARAYAN SHARMA, AGED ABOUT 41
YEARS, OCCUPATION: GOVERNMENT SERVICE
RESIDENT OF 178, SHUBH LABH HOME
COLONY KANADIYA ROAD, INDORE (MADHYA
PRADESH)**

.....PETITIONER

**(BY SHRI AMIT AGRAWAL – SENIOR ADVOCATE WITH SHRI
DEVAASHEESH DUBEY - ADVOCATE)**

AND

- 1. THE STATE OF MADHYA PRADESH
PRINCIPAL SECRETARY , VALLABH
BHAWAN BHOPAL (MADHYA PRADESH)**
- 2. THE INSPECTOR GENERAL OF
REGISTRATION AND SUPERINTENDENT
OF STAMPS, COMMERCIAL TAXES
DEPARTMENT MADHYA PRADESH PLOT
NO. 35-A, ARERA HILLS, PANJIYAN
BHAWAN, BHOPAL (MADHYA PRADESH)**
- 3. THE COLLECTOR DISTRICT INDORE
COLLECTOR OFFICE, MOTI TABELA,
INDORE (MADHYA PRADESH)**
- 4. DR. AMRESH NAIDU OCCUPATION:
PRESENTLY POSTED AS DISTRICT
REGISTRAR OFFICE OF DISTRICT**

REGISTRAR ZONE II, FIRST FLOOR,
DHAKKAN WALA KUAN, INDORE
(MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI VAIBHAV BHAGWAT – G.A. FOR RESPONDENT NOS.1 TO 3
AND SHRI RISHI TIWARI – ADVOCATE FOR RESPONDENT NO.4)

.....
*This petition coming on for admission this day, the court passed
the following:*

ORDER

- 1] Heard finally, with the consent of the parties.
- 2] This petition has been filed by the petitioner, Deepak Kumar Sharma, presently posted as Senior District Registrar, Indore under Article 226 of the Constitution of India seeking the following reliefs:-

“7.1 Issue a writ in the nature of certiorari to quash the impugned circular dated 22.11.2023 bearing no. 377/C.N./260752 passed by the Respondent No. 2. (**Annexure-P/1**).

7.2 Issue a writ in the nature of certiorari to quash the impugned order dated 22.11.2023 passed by the Respondent No.4 being (*sic*) bearing no.48/V.G.P/2023 (**Annexure- P/2**).

7.3 Issue a writ in the nature of certiorari to quash the show-cause notice dated 12.12.2023 against the Petitioner bearing no.35/C.N./260752/ENQ/IGRS/ passed by the Respondent No.2 (**Annexure – P/3**).

7.4 Issue a writ in the nature of quo warranto against Respondent no. 4 calling upon him to explain under what authority he his discharging the duties of Senior District Registrar, Indore and appropriate order be passed ousting him from the office of Senior District Registrar, Indore.

7.5 Issue a writ in the mature (*sic*) nature of mandamus directing the Respondents to comply with the appointment order dated 07.03.2023 passed by the State Government whereby the has been posted to the sole sanctioned post of Senior District Registrar, Indore.

7.6 Appropriate Writ/order/ direction be issued to award the cost of the present Writ Petition.

7.7 Any other relief which this Hon'ble Court deems fit may kindly be granted.”

3] The petitioner is aggrieved by the order dated 22.11.2023, passed by the respondent No.2 Inspector General of Registration & Superintendent of Stamps, Commercial Tax Department, directing that it has been observed that where more than one Senior District Registrar has been appointed, certain disputes have arisen in respect of the work distribution, hence, in such places where more than one Senior District Registrar is working, the senior most District Registrar shall hold the post of Senior District Registrar.

4] The petition is also preferred against the order dated 22.11.2023, passed by the respondent No.4 Dr. Amresh Naidu, who is posted as District Registrar, Zone – II, Indore whereby pursuant to the order dated 22.11.2023, passed by the respondent No.2, the respondent no.4 has ordered that he would retain the post of Senior District Registrar, Indore and has also issued a work distribution memo wherein the petitioner has been given the charge of District Registrar of Indore – I.

5] Petitioner is also aggrieved by the show cause notice dated 12.12.2023, issued by the I.G. respondent No.2 whereby allegations have been made against him regarding dereliction of his duties.

6] In brief, the facts of the case are that the petitioner was earlier appointed by the State of M.P. as the Senior District Registrar, Indore vide order dated 07.03.2023, also specifically clarifying that this appointment is only a stop gap arrangement and it would not

confer any right to the petitioner to claim any seniority. After the aforesaid order was passed, vide order 21.07.2023, the respondent No.4 Amresh Naidu was also posted from Ratlam to Indore Zone – II as Senior District Registrar. It is an admitted position that the respondent No.4 is senior to the petitioner and in such circumstances, the respondent No.2 I.G. vide its order dated 22.11.2023 issued the office order that it is seen that where more than one Senior District Registrar are appointed, certain disputes have arisen in respect of the work distribution, hence, in such places where more than one Senior District Registrar is working, the senior most District Registrar shall hold the post of Senior District Registrar. Pursuant to this order, the respondent No.4 assuming the charge of the Senior District Registrar has issued work distribution memo, directing the petitioner to work as District Registrar of Indore – I.

7] The aforesaid order is challenged by the petitioner on the ground that the petitioner was posted as Senior District Registrar, Indore by the State Government itself and thus, merely on account of an order passed by the I.G. respondent No.2 on 22.11.2023, the respondent No.4 had no authority to assume the charge on his own, of the Senior District Registrar, and to direct the petitioner to work as the District Registrar of Indore – I.

8] Shri Amit Agrawal – learned senior counsel for the petitioner has submitted that the petitioner was posted by the State Government only, and it was for the State Government only to appoint the petitioner on any other post, and the respondent No.4

cannot assume the charge of the Senior District Registrar, Indore on his own, only on the basis of the order passed by the respondent No.2 I.G. on 22.11.2023. Senior counsel has also submitted that once the State Government has appointed the petitioner, specifically directing that the petitioner cannot claim any seniority to the said post and it is the case of the petitioner that he is also not claiming any seniority, and the fact that the appointment of the petitioner was in line with Sub-rule (4) of Rule 6 of Madhya Pradesh Registration and Stamp Executive (Gazetted) Service Recruitment Rules, 2007 (in short 'the Rules of 2007'), it was only for the State Government to pass such an order. Thus, it is submitted that the impugned order is bad in law and is liable to be quashed.

9] In support of his submissions, Shri Agrawal has also relied upon a decision rendered by the Karnataka High Court in the case of **B.N. Dhotrad Vs. The Board of Directors/cum-Appellate Authority and others** reported as **2006 SCC OnLine Kar 435** paras 12, 13 and 14 in which the reliance has also been placed on the decision of the Supreme Court in the case of **Ramakant Shripad Sinai Advalpalkar Vs. Union of India** reported as **AIR 1991 SC 1145**. Thus, it is submitted that merely because the petitioner is junior to the respondent No.4, he cannot be deprived of the order which has been passed in his favour by the State Government.

10] Senior counsel for the petitioner has also submitted that even the show cause notice dated 12.12.2023, issued to the petitioner by the respondent No.2 I.G., alleging dereliction of his duties, cannot

be sustained in the aforesaid facts and circumstances of the case.

11] Prayer is opposed by the State and a reply has also been filed. Shri Vaibhav Bhagwat, learned Government Advocate for the respondent Nos.1, 2 and 3 has submitted that after the petitioner and the respondent No.4 were posted at Indore, it came to the knowledge of the I.G., the respondent No.2 that both these persons are the Senior District Registrars, which led him to pass the order dated 22.11.2023, only with a view to streamline the appointment and to avoid any conflict of seniority between the parties.

12] It is also submitted that the aforesaid order has been passed in the *bona fide* exercise of his powers conferred on the I.G. respondent No.2 under Section 69 of the Registration Act, 1908 (in short 'the Act of 1908'), which provides for power of Inspector General to superintend registration offices and make rules. Counsel has laid emphasis on the fact that the aforesaid section clearly provides that the I.G. shall have the power over all the registration offices in the territories under the State Government and also to make rules in this regard and under these powers, the impugned order dated 22.11.2023 has been passed, which cannot be called in question.

13] Shri Rishi Tiwari, learned counsel appearing for the respondent No.4 Dr. Amresh Naidu has also opposed the prayer and it is submitted that no illegality has been committed by the respondent No.2 I.G. in passing the aforesaid order as the Indore has been treated as the *Rajbhogi* city in which more than one District Registrar can be appointed, and so far as Indore is concerned, the

provision is that it has four District Registrars for the four Sub – Districts, and it is just and proper if the senior most District Registrar is heads the District. In support of his submissions, Shri Tiwari has relied upon a decision rendered by Co-ordinate Bench of this Court in the case of **Dr. V. B. Singh Baghel Vs. State of M.P. & Ors.** passed in **W.P. No.7823 of 2015 dated 20.06.2016** (para 10). Counsel has also relied upon another decision rendered by the Supreme Court in the case of **State of Haryana Vs. S.M. Sharma and others** reported as **1993 Supp (3) SCC 252** paras 9, 10 and 12.

14] In rebuttal, Shri Amit Agrawal, learned senior counsel has submitted that the respondents/State has deliberately not reproduced the Sub-section (2) of Section 69 of the Act of 1908 in their return, which provides that the Rules so made shall be approved by the State Government, and Sub-section (2) has to be read *ejusdem generis* to sub-section (1) and cannot be read in isolation. It is submitted that the aforesaid section refers to only rule making powers and general superintendence as contained therein and its scope cannot be enlarged.

15] Heard counsel for the parties and perused the record.

16] From the record, it is found that the petitioner is primarily aggrieved by the order passed by the respondent No.4 Dr. Amresh Naidu, assuming the charge of Senior District Registrar in the light of the order dated 22.11.2023 passed by the respondent No.2 Inspector General of Registration & Superintendent of Stamps, Commercial Taxes Department, wherein he has ordered that in the cities of Indore, Bhopal, Gwalior and Jabalpur, which are considered as *Rajbhogi*

cities, work distribution has been ordered in which work has been distributed amongst the Senior District Registrars and District Registrars, and in the present scenario when there are more than one Senior District Registrars are available in *Rajbhogi* cities, a problem has occurred regarding the work distribution, hence, it is directed that in those cities where there are more than one Senior District Registrars, it would be the senior most District Registrar, who would exercise the powers of Senior District Registrar. The petitioner is also aggrieved by the work distribution memo dated 22.11.2023, in which the petitioner has been given the work of District Registrar of Indore – I, by the respondent no.4, despite the fact that in the petitioner’s initial order of appointment dated 07.03.2023 (Annexure P/7), he has been posted by the State Government as Senior District Registrar, Indore with a specific direction that the designation would only be temporary and the petitioner cannot claim any right by the aforesaid designation of Senior District Registrar.

17] In their reply, the respondent Nos.1 to 3/State has relied upon Section 69 of the Act of 1908, which reads as under:-

“69. Power of Inspector-General to superintend registration offices and make rules.—(1) The Inspector-General shall exercise a general superintendence over all the registration offices in the territories under the State Government, and shall have power from time to time to make rules consistent with this Act—

(a) providing for the safe custody of books, papers and documents; 2 *** 3

[(aa) providing the manner in which and the safeguards subject to which the books may be kept in computer floppies or diskettes or in any other electronic form under sub-section (1) of section 16A;]

(b) declaring what language shall be deemed to be commonly used in each district;

(c) declaring what territorial divisions shall be

recognized under section 21;

(d) regulating the amount of fines imposed under sections 25 and 34, respectively;

(e) regulating the exercise of the discretion reposed in the registering officer by section 63;

(f) regulating the form in which registering officers are to make memoranda of documents;

(g) regulating the authentication by Registrars and Sub-Registrars of the books kept in their respective offices under section 51;

[(gg) regulating the manner in which the instruments referred to in sub-section (2) of section 88 may be presented for registration;]

(h) declaring the particulars to be contained in Indexes Nos. I, II, III and IV, respectively;

(i) declaring the holidays that shall be observed in the registration offices;

(j) generally, regulating the proceedings of the Registrars and Sub-Registrars.

(k) Prescribing the manner in which and the terms subject to which persons who writ documents for presentation to a registering officer may be granted licences and the fees to be paid for such licences]; and

(1) regulating the procedure for presentation of document, appearance for admission, endorsement, manner of fixing signature and seal, mode of payment of Registration Fees and other Fees and any other process when the document is presented in electronic form. }

(2) The rules so made shall be submitted to the [State Government] for approval, and, after they have been approved, they shall be published in the Official Gazette, and on publication shall have effect as if enacted in this Act.”

18] Although, sub-s.(2) has not been reproduced in the return filed by the respondent Sate, but a perusal of the aforesaid section clearly reveals that respondent No.2 I.G. has the power of general superintendence over all the registration offices in the territories under the State Government, and shall also have powers, from time to time, to make rules consistent with the Act of 1908, and it is also provided sub-section (1) that the rules, which the I.G. is empowered to make, are generally for regulating the proceedings of the Registrars and Sub-

Registrars, whereas sub-section (2) provides that the rules so made shall be approved by the State Government, and after they have been approved, they shall be published in the Official Gazette, and on publication, shall have effect as it is enacted in this Act.

19] Thus, in the light of the aforesaid provision, a bare perusal of the order dated 22.11.2023 passed by the I.G. respondent No.2, would lead this Court to arrive at a conclusion that the aforesaid order has been passed by I.G., the respondent No.2, in exercise of the powers of general superintendence over all the Registration Offices, and cannot be categorized as Rule framed under Section 69 of the Act of 1908.

20] This Court is also of the considered opinion that s.69 of the Act of 1908 cannot be interpreted in the manner that every order passed by the respondent No.2/I.G in exercise of his powers of general superintendence over all the registration offices, requires approval from the State Government, and if it is held that every order requires such approval and subsequent Gazette notification, then the powers so vested in the I.G. under Section 69 would be rendered futile.

21] Senior counsel for the petitioner has relied upon a recent decision rendered by the Supreme Court in the case of **Sivanandan C.T. and others Vs. High Court of Kerala and Ors.** reported as **(2024) 3 SCC 799** to submit that once the petitioner is appointed on the post of Senior District Registrar, then he is entitled to a legitimate expectation that he should not be removed from the said post as there has to be some consistency and predictability in the decision making process of the State. The relevant paras of the same read as under:-

“44. In a constitutional system rooted in the rule of law, the discretion available with public authorities is confined within clearly defined

limits. The primary principle underpinning the concept of rule of law is consistency and predictability in decision-making. A decision of a public authority taken without any basis in principle or rule is unpredictable and is, therefore, arbitrary and antithetical to the rule of law. The rule of law promotes fairness by stabilising the expectations of citizens from public authorities. This was also considered in a recent decision of this Court in *SEBI v. Sunil Krishna Khaitan*, wherein it was observed that regularity and predictability are hallmarks of good regulation and governance. This Court held that certainty and consistency are important facets of fairness in action and non-arbitrariness: (*Sunil Krishna Khaitan case*, SCC pp. 678-79, para 59)

“59. ... Any good regulatory system must promote and adhere to principle of certainty and consistency, providing assurance to the individual as to the consequence of transactions forming part of his daily affairs. ... This does not mean that the regulator/authorities cannot deviate from the past practice, albeit any such deviation or change must be predicated on greater public interest or harm. This is the mandate of Article 14 of the Constitution of India which requires fairness in action by the State, and non-arbitrariness in essence and substance. Therefore, to examine the question of inconsistency, the analysis is to ascertain the need and functional value of the change, as consistency is a matter of operational effectiveness.” (emphasis supplied)

45. The underlying basis for the application of the doctrine of legitimate expectation has expanded and evolved to include the principles of good administration. Since citizens repose their trust in the State, the actions and policies of the State give rise to legitimate expectations that the State will adhere to its assurance or past practice by acting in a consistent, transparent, and predictable manner. The principles of good administration require that the decisions of public authorities must withstand the test of consistency, transparency, and predictability to avoid being regarded as arbitrary and therefore violative of Article 14.

46. From the above discussion, it is evident that the doctrine of substantive legitimate expectation is entrenched in Indian administrative law subject to the limitations on its applicability in given factual situations. The development of Indian jurisprudence is keeping in line with the developments in the common law. The doctrine of substantive legitimate expectation can be successfully invoked by individuals to claim substantive benefits or entitlements based on an existing promise or practice of a public authority. However, it is

important to clarify that the doctrine of legitimate expectation cannot serve as an independent basis for judicial review of decisions taken by public authorities. Such a limitation is now well recognised in Indian jurisprudence considering the fact that a legitimate expectation is not a legal right. It is merely an expectation to avail a benefit or relief based on an existing promise or practice. Although the decision by a public authority to deny legitimate expectation may be termed as arbitrary, unfair, or abuse of power, the validity of the decision itself can only be questioned on established principles of equality and non-arbitrariness under Article 14. In a nutshell, an individual who claims a benefit or entitlement based on the doctrine of legitimate expectation has to establish: (i) the legitimacy of the expectation; and (ii) that the denial of the legitimate expectation led to the violation of Article 14.”

(Emphasis Supplied)

22] In the considered opinion of this Court, the same judgement can also be fruitfully used by this Court to dispel the submissions as advanced by the Senior counsel for the petitioner as the Supreme Court also observed that the regularity and predictability are hallmarks of good regulations and governance, and in the present case what the respondent No.2 I.G. has done is that he has simply directed that the Senior most District Registrar shall be the Senior District Registrar which order cannot be found fault with, and needs no interference as there is no reason for the State Government to appoint a person as the Senior District Registrar over and above the Senior most District Registrar. Such practice of appointing a junior officer over and above the senior officer would only reflects the biased approach of the State, and cannot be said to be an example of good governance, and if the respondent No.2 I.G. has tried to undo what can be termed as slight error on the part of the State Government, his decision cannot be faulted with.

23] So far as the other decisions relied upon by the senior counsel

for the petitioner are concerned, the same are distinguishable on facts and have no application in the facts and circumstances of the case.

24] Although, this Court is of the considered opinion that it was either for the respondent No.2 I.G. or the State Government to pass the appropriate order directing that the respondent No.4 shall be the senior District Registrar instead of the petitioner, and the action on the part of the respondent No.4 appears rather unsavory, and could have been done without, as this court is of the opinion that instead of respondent No.4 declaring himself to be the senior most District Registrar, it was incumbent upon the respondent No.2 I.G. to pass the appropriate order that the respondent No.4 is the senior most District Registrar and would preside over as the Senior District Registrar.

25] The petitioner has also placed on record the photographs of the petitioner's nameplate with designation, outside his office as also the respondent No.4's nameplate with designation, and in the case of the petitioner he has mentioned that he is the "Senior District Registrar", whereas the respondent No.4 has written that he is the "Senior *Most* Senior District Registrar", which is rather ridiculous and absurd action on the part of these officers in public domain. So far as the designation of Registrars and Sub-Registrars is concerned, Section 6 of the Act of 1908 reads as under:-

"6. Registrars and Sub-Registrars.—The [State Government] may appoint such persons, whether public officers or not, as it thinks proper, to be Registrars of the several districts, and to be Sub-Registrars of the several sub-districts, formed as aforesaid, respectively."

26] In view of the same, this court is of the considered opinion that such tussle between the two senior government officers must be avoided in public domain which obviously has the effect of lowering

esteem of the higher offices of the State, as there can be only one post for Senior District Registrar who shall be the senior most also.

27] In such circumstances, the impugned **order dated 22.11.2023 (Annexure P/1)** passed by the respondent no.2/I.G., which also has the backing of the State Government as the State is also supporting the action taken by the respondent No.2 I.G., **is hereby affirmed.** However, the order dated **22.11.2023 (Annexure P/2)**, passed by the respondent No.4 declaring himself to be the senior most **is hereby set aside** and the respondent No.2 /I.G. is directed to pass the appropriate order to the effect that the respondent No.4 being the senior most Registrar, shall hold the office of the Senior District Registrar Indore, and the other Registrars, including the petitioner shall work under the respondent No.4. **Let the aforesaid exercise be completed within a week's time from the date of receipt of the copy of this order positively.**

28] With the aforesaid directions, the petition stands **disposed of.**

(SUBODH ABHYANKAR)
JUDGE

Pankaj